sion, namely section 4(1A) of the Railway Ordinance, 1948. That provides (*inter alia*) as follows:

"The written laws for the time being in force in the Federation or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation...."

It follows from that provision that section 4(2)(b) of the Control of Rent Act, 1966, being one of the written laws for the time being in force, applies to the Railway Administration in the same manner as it applies to the Government of the Federation. That is to say, if the premises are the property of the Railway Administration they are exempted from the protection of the Act as if they had been the property of the Government of the Federation. Their Lordships respectfully agree with the conclusion of Gill C.J. in the Federal Court that section 4(1A) is a complete answer to this argument of the appellants. It is on its plain terms precisely applicable to the present circumstances. Their Lordships are unable to agree with Chang Min Tat J. and Ali F.J. who were of the view that the object of the provision was not to extend any written law applicable to Government property to the property of the Railway Administration.

They are however told, and indeed it appears in the judgment of Gill C.J., that the respondents are not in fact the registered owners of the premises as averred and admitted. It is only just in those circumstances to examine, as the High Court and the Federal Court did, whether the appellants fare any better upon the true facts than they do upon those which were averred and admitted. In their Lordships' opinion they do not.

There are, it seems, two possibilities. The first was that favoured by Chang Min Tat J. and Gill C.J. It was as follows. By virtue of section 15(1) of the Railway Ordinance, 1948, the premises on the commencement of the Ordinance vested in the Federal Lands Commissioner for the purposes of the Malayan Railway for the like title, estate, or interest and on the like tenure as the same were vested or held immediately before the commencement of the Ordinance. The premises being vested in the Federal Lands Commissioner were at all material times the property of the Government of the Federation of Malaya and accordingly exempted from the provisions of the Control of Rent Act.

Ali F.J., whilst also coming to the conclusion that the appellants must fail, reached that conclusion by a different route. As is correctly alleged in the statement of claim the premises are situated on land which was reserved for the railway. They are not alienable lands. They cannot be acquired or purchased. They are, as Mr. Rattee put it, "in limbo". They are lands reserved for railway purposes.

There is no doubt that railways are in the Federal Legislative list by virtue of the 9th Schedule to the Constitution, List I, item 10(b):

"Railways, excluding Penang Hill Railway."

Therefore this was land which was reserved for federal purposes.

Article 85(3) of the Constitution provides as follows:

"Except as provided by this Article, land in a State which is reserved for federal purposes shall not cease to be so reserved, and all land so reserved shall be controlled and managed by or on behalf of the Federal Government."

These premises are, then, controlled and managed by the respondents on behalf of the Federal Government. The fact that the land is not registered in the name of the Federal Government is neither here nor there.

Their Lordships are of the opinion, if it is necessary to decide between the two lines of approach, that this analysis of the situation by Ali F.J. is to be preferred. The premises whilst remaining the property of the Federal Government were under the day-to-day control of the respondents who were thus empowered to grant tenancies, serve notices to quit and so on. Being the property of the Federal Government the premises on this basis too were outside the Control of Rent Act.

*Was the learned judge at fault in dealing with the application under Order 14 as a proceeding in lieu of demurrer under Order 25?*

The complaint is that the judge acted *suo motu* under Order 25 when Order 25 rule 2 expressly requires either the consent of both parties or an application by one of the parties to enable action under the Order to be taken before trial.

Their Lordships are prepared to assume without deciding that the judge should have invited an application from the respondents before acting as he did. Nevertheless the effect of his decision was precisely the same as if he had acceded to the application under Order 14 and had entered judgment for the plaintiffs. The fact that he may possibly have adopted an erroneous method does not alter the fact that the result was correct in law, just and expeditious. This ground of appeal has no merit or substance.

Their Lordships will therefore advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Turner Peacock; Stephenson Harwood.*

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## BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATIONS v. CHAI YEN

**[P.C. (Lord Edmund-Davies, Lord Fraser of Tulleybelton, Lord Russell of Killowen, Lord Keith of Kinkel & Lord Lane) October 29 & December 3, 1979]**

**[Privy Council Appeal No. 39 of 1978]**

*Practice and Procedure — Appeal — Time for appeal — Order made in Chambers — Whether time runs from date of the order or of the decision not to require further arguments — R.S.C. 1957, O. 54, r. 22A — Federal Court (Appeals) (Transitional) Rules, 1963, r. 13(a).*

This was an appeal from the decision of the Federal Court, reported in [1978] 2 M.L.J. 245, which held that in the case of an order in chambers in which an application under Order 54, rule 22A had been lodged in time, the time for appeal ran from the date not of the order but of the decision not to require further arguments, and therefore

on the facts of the case, the appeal had been properly brought to the court.

**Held:** the Federal Court came to the right conclusion in this matter and the only way in which it was possible with fairness to reconcile the provisions of rule 13(a) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 on the one hand and of Order 54, rule 22A of the Rules of the Supreme Court on the other was to hold that in the case of an order made in Chambers in which an application under Order 54, rule 22A has been lodged within the time allowed, the time for appealing under rule 13(a) ran from the date when the judge's decision not to require further argument was communicated to the applicant and not from the date of the original order.

[**Editorial Note:** Rule 13(a) of the Federal (Civil Appeals) (Transitional) Rules, 1963 has been re-enacted as rule 56 of the Rules of the Federal Court 1980 (P.U. (A) 33/80].

PRIVY COUNCIL APPEAL FROM MALAYSIA.

*K. Thayalan* for the appellant.

*G.T. Rajan* for the respondent.

*Cur. Adv. Vult.*

**Lord Lane** (delivering the judgment of the Board): This is an appeal from the Federal Court of Malaysia who had upheld the decision of Mohamed Azmi J. in the High Court. The short point is whether the respondent under the rules is out of time for and accordingly barred from appealing to the Federal Court.

The history of events is as follows. The appellant in December 1975 filed an originating summons to set in motion foreclosure proceedings in respect of certain lands charged by the respondent to the appellant. Somewhat surprisingly, in view of the allegation of fraud and undue influence made by the respondent, the matter was decided by the learned judge on affidavit evidence. Sitting in chambers on September 6, 1976 he made the various orders for which the appellant prayed, including an order that the lands should be sold by public auction on December 13, 1976 for the recovery of the monies owing.

On September 8, 1976 the respondent's solicitors wrote to the High Court requesting that the judge should hear further arguments in open court.

On October 14, 1976, that is to say some five weeks after the original determination, the High Court informed the respondent's solicitors that the judge declined to hear further argument and sent them a certificate to that effect. On November 1, 1976, that is to say some two weeks after the judge's refusal but about seven weeks after the original determination, the respondent filed a notice of appeal to the Federal Court from the decision of Mohamed Azmi J. of September 6. On May 31, 1978, before the hearing proper of the appeal, the appellant raised the preliminary objection that the appeal had not been brought within the time prescribed by rule 13(a) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963.

Rule 13(a) provides as follows:

"No appeal shall, except by special leave of the full court, be brought after the expiration of one month —

(a) in the case of an appeal from an order in Chambers, from the date when such order was pronounced or when the appellant first had notice thereof."

It was common ground that the respondent had not sought from any court any leave to appeal. Consequently the appellant's argument was simple. The appeal was brought more than one month from the date when the judge pronounced his order and so is caught by the plain words of rule 13(a) and is out of time.

The matter is however not so simple as that. The application, already mentioned, by the respondent's solicitors on September 8, 1976 for the hearing of further argument by the judge was made under the provisions of Order 54 rule 22A of the Rules of the Supreme Court, 1957. That runs as follows:

"Any party dissatisfied with any order made by a judge in chambers may apply, at the time when the order is made, orally, or at any time within four days from the day of the order in writing to the Registrar, for the adjournment of the matter into court for further argument; and on such application, the judge may either adjourn the matter into court and hear further argument, or may certify in writing that he requires no further argument. If the judge hears further argument he may set aside the order previously made, and make such other order as he thinks fit."

It is not difficult to see that there is potentially an inherent conflict between the terms of that Order and those of rule 13(a). There is no time limit imposed upon the judge under Order 54 within which he must grant or refuse the application for further argument. If he takes more than a month to make up his mind, what is the applicant to do? If she (it being a woman in this case) files notice of appeal in accordance with rule 13(a) that might be taken as an abandonment of her application to the judge. Indeed, Mr. Thayalan for the appellant firmly contended that such would be the result. If on the other hand she awaits the judge's decision before filing a notice of appeal she will be met, as here, by the argument that rule 13(a) is clear, and that the other party should not be deprived of their safety under that rule by what is called by Mr. Thayalan "the unilateral act" of the present respondent in applying to the judge under Order 54.

No doubt this problem was not present to the minds of those who were responsible for the drafting of the 1963 Rules, but somehow or other the dilemma has to be resolved.

It seems to their Lordships that no litigant should be put in the position of having to elect between two different remedies by something entirely outside the litigant's control, namely, the length of time taken by a judge to reach or pronounce his conclusion. The essence of any rule of procedure must be fairness, and to apply stringently the provisions of rule 13(a) would in circumstances such as the present work manifest injustice to the respondent. She might be forced, in short, to abandon a perfectly proper and relatively inexpensive application to the judge to hear further argument for a costly and possibly unnecessary appeal to the Federal Court. Nor are their Lordships impressed by the suggestion that the respondent could have put matters right by applying for special leave under rule 13(a). She should not have that burden thrust upon her.

Their Lordships do not consider it necessary to embark upon an examination of the perennially difficult question whether the decision of Mohamed Azmi J. was a final or an interlocutory order. Assuming without deciding that it was final, nevertheless immediately the timeous application of September 8, 1976 was made to the court to hear further argument the whole

matter entered a state of suspended animation until the judge ruled one way or the other upon the application. True it is that the application did not act as an automatic stay, but if the judge had failed to make his ruling by the time the date fixed for sale had arrived on December 13, 1976, an application to stay the sale could not have been other than successful.

Their Lordships are of the view, therefore, that the Federal Court came to the right conclusion in this matter, and that the only way in which it is possible with fairness to reconcile the provisions of rule 13(a) on the one hand and of Order 54 rule 22A of the Rules of the Supreme Court on the other is to hold that in the case of an order made in chambers in which an application under Order 54 rule 22A has been lodged within the time allowed, the time for appealing under rule 13(a) runs from the date when the judge's decision not to require further argument is communicated to the applicant and not from the date of his original order.

Their Lordships would wish to add this comment. Even if they had not been in agreement with the reasoning and conclusions of the Federal Court (as in fact they are), they would have felt reluctant to differ from that court on a matter which is eminently procedural and eminently a matter in this case to be left to the courts of Malaysia to decide.

Their Lordships accordingly advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Stephenson Harwood; Philip Conway Thomas & Co.*

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# A SINGAPORE REPORTS

## *RE* AMOS WILLIAM DAWE; AMOS WILLIAM DAWE v. WAYFOONG MORTGAGE AND FINANCE (SINGAPORE) LTD.

**[C.A. (Chua, Kulasekaram & D'Cotta JJ.) July 20, 1979]**
**[Singapore — Civil Appeal No. 37 of 1979]**

*Bankruptcy — Receiving and Adjudication orders — Appeal against — Whether appellant "debtor" within s. 3(3), Bankruptcy Act — Questions subjective to appellant and necessitating his physical presence for cross-examination — Bankruptcy Act (Cap. 18), ss. 3(3) & 105(1).*

In this case, a bankruptcy petition was presented on July 10, 1978 by the respondents against the appellant in respect of the non-payment of a final judgment amounting to $1,077,919.33 dated November 22, 1977, obtained by the respondents against the appellant in the High Court, Singapore. On October 27, 1978, Receiving and Adjudication orders were made against the appellant.

In the petition it was stated that the appellant "has for the greater part of six months next preceding the presentation of this petition resided at No. 15, Barker Road, Singapore, within the jurisdiction of this court". On February 5, 1979, the appellant filed a motion for an order that the Receiving and Adjudication orders be rescinded and annulled and that the petition of the respondents be set aside.

In the court below, counsel for the appellant contended the appellant was not domiciled in Singapore, that he had not, within a year before the date of the presentation of the petition, ordinarily resided in or had a dwelling-house or place of business in Singapore. The learned Chief Justice held that he was not prepared to accept the appellant's affidavits and required the appellant's presence in court for cross-examination. The appellant's then counsel said that she would not be able to produce the appellant and that if the appellant did come to Singapore he would be arrested. Thereupon the learned Chief Justice dismissed the motion with costs. The appellant appealed.

**Held,** dismissing the appeal: the questions which had to be decided in this case were questions subjective to the appellant and which required his physical presence in Singapore for cross-examination in court. There was therefore no reason to interfere with the decision of the learned Chief Justice.

*Case referred to:-*

(1) *In re A Debtor* [1978] 1 W.L.R. 1512, 1516.

CIVIL APPEAL.

*H.E. Cashin* (*Dr. Myint Soe* with him) for the appellant.

*Tan Bok Hoay* for the respondents.

*Mohamed Harith Kassim* (Assistant Official Assignee) for the Official Assignee.

*Cur. Adv. Vult.*

**Chua J.** (delivering judgment of the Court): On July 10, 1978, a bankruptcy petition was presented by the respondents against the appellant in respect of the non-payment of a final judgment amounting to $1,077,919.33 dated November 22, 1977, obtained by the respondents against the appellant in the High Court, Singapore. Receiving and Adjudication orders were made against the appellant on October 27, 1978. In the petition it was stated that the appellant "has for the greater part of six months next preceding the presentation of this petition resided at No. 15, Barker Road, Singapore, within the jurisdiction of this court." The petition was signed and presented by Mr. Keng